

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TABERNA CAPITAL MANAGEMENT, LLC,	:	
	:	
Plaintiff,	:	08 Civ. 1817 (JSR)
	:	
-v-	:	<u>ORDER</u>
	:	
SIDNEY B. DUNMORE, MICHAEL A. KANE,	:	
and DHI DEVELOPMENT f/k/a DUNMORE	:	
HOMES, LLC,	:	
	:	
Defendants.	:	
-----X		

JED S. RAKOFF, U.S.D.J.

Confirming the Court's orders from the bench, see transcript 6/12/08, the portions of defendant Sidney B. Dunmore's pending motion that seek 1) the dismissal of the complaint for failure to state a claim and 2) a more definite statement of facts are denied because those portions of the motion are barred by the plain language of Rule 12(g)(2). The Court reserves decision on the portion of Dunmore's motion that seeks dismissal "due to the automatic stay or due to plaintiff's lack of standing." Defendant Michael A. Kane's motion is denied in its entirety because it, too, is barred by Rule 12(g)(2). The Court has no power to ignore the mandatory and binding language of Rule 12(g)(2). Compare Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 168 (1993) ("[A change to the Federal Rules] is a result which must be obtained by the process of amending the Federal Rules, and not by judicial interpretation.") Further, even if this Court had the discretion to consider the dismissed motions at this time, it would decline to exercise that discretion here.

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SO ORDERED.



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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
June 12, 2008